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A Report From the
Coal Tax Oversight Committee
to the

REVENUE OVERSIGHT COMMITTEE

December 1988



Montana Legislative Council

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A Report

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COAL TAX OVERSIGHT SUBCOMMITTEE

to the

REVENUE OVERSIGHT COMMITTEE

By

Paul E. Verdon, Staff Researcher

November 1988

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PREFACE

Twelve years after the enactment of Montana's 30% coal severance tax, the Legislature, in 1987, substantially reduced that levy--by as much as one-half if certain conditions could be met--in an effort to invigorate a lagging industry. The action came two years after the 1985 Legislature acknowledged the coal industry's continuing entreaties by accepting the Governor's proposal for a new coal production incentive tax credit.

The implications for Montana's future of the severance tax rate reductions enacted in HB 252 in 1987 (Chapter 608, Laws of 1987) are immense. Proponents of the reduction hailed it as an essential step in Montana's course toward nurturing a vital industry. Opponents viewed it as an ill-advised and futile forfeiture of substantial revenues at a point in the state's history when the diminishing income of state government imposes restraints on vital activities.

Within this framework, the attention of the Coal Tax Oversight Subcommittee during the 1987-88 interim focused closely upon the impacts of HB 252. In fiscal year 1988, the coal industry and its customers responded vigorously to the production and sales challenge set forth in HB 252. Two months ahead of the deadline, coal production and sales exceeded the statutory threshold identified in HB 252 that will allow an ultimate reduction of the severance tax rate to 15%.

That sales and production accomplishment earned the coal producers and purchasers a reduction of the severance tax rate from 30% to 25%, effective for coal produced after

June 30, 1988. The tax rate will drop an additional 5% in 1990 and a further 5% to the 15% level in 1991.

The proof of the effectiveness of the severance tax reduction in protecting Montana's coal industry lies five years or more in the future when existing contracts begin to expire. Successful renewals of those contracts or their replacement with new agreements will provide credibility for the arguments of HB 252 proponents.

RECOMMENDATIONS

The Coal Tax Oversight Subcommittee, by a vote of 3-0 with one member absent, approved for introduction and recommended passage of these bills:

LC 76 which would modify certain provisions of HB 252 of the 1987 Legislature, e.g., to reduce the severance tax on lignite after June 30, 1991, from 13% to 10% to conform with the tax rate reductions allowed for other coal and to make the severance tax rate reductions in HB 252 fully applicable to provisions of the New Coal Production Incentive Tax Credit Act.

LC 77 which would amend the definition of "contract sales price" in the coal severance tax law to include royalty payments to private owners under the same exemptions accorded to royalty payments to federal, state, and Indian owners for purposes of assessing severance tax.

By the same 3-0 vote, the Subcommittee members approved these resolutions for submission to the 51st Legislature:

- Urging that the 51st Legislature and the Coal Board take necessary action to allow the earliest possible completion of Highway 314 in Big Horn County and Highway 384 in Treasure County.

- Urging the 51st Legislature to assure funding for the Coal Board to support the activities of the Eastern Coal Counties Task Force and the water monitoring project being conducted in the coal mining area by the Montana Bureau of Mines and Geology.

- Informing the 51st Legislature of the Subcommittee's conviction that the needs of the coal impact area and the Coal Board's priorities there should be reflected in any legislation on infrastructure improvements, and that if any program implementing statewide assistance is proposed, the Coal Board merits priority consideration to administer the program.

- Urging the 51st Legislature to face the challenge of acid rain legislation, both to promote new mines and coal production in Montana and to make Montana's coal acceptable on a nationwide sales/purchase basis; to promote the development of clean coal technology; and to designate these subjects as high priorities for consideration during the 1989-90 interim.

By a vote of 3-0, the Subcommittee endorsed the concept of statewide library services expressed in HB 603 of the 1987 Legislature without committing funds for the program.

ACTIVITIES OF THE COAL TAX OVERSIGHT SUBCOMMITTEE

5-18-201. Coal tax oversight subcommittee -- appointment and composition. (1) There is a coal tax oversight subcommittee of the revenue oversight committee.

(2) The subcommittee consists of four legislators who are not members of the revenue oversight committee. Two members must be from the senate and two members must be from the house of representatives. No more than two members may be of the same political party. The subcommittee shall be appointed by the speaker of the house and the senate committee on committees.

5-18-202. Chairman -- meetings. The coal tax oversight subcommittee shall elect a chairman and may meet upon the call of that chairman.

5-18-203. Powers and duties of subcommittee. (1) The coal tax oversight subcommittee may:

(a) review the programs financed by coal severance tax funds; and
(b) consider any matters relating to coal taxation.

(2) The subcommittee shall report and make recommendations to the revenue oversight committee.

MONTANA CODE ANNOTATED

Members of the Coal Tax Oversight Subcommittee met nine times during the 1987-88 interim to fulfill the statutory responsibilities prescribed in sections 5-18-201 through 5-18-203, MCA.

Most of the business of the first four meetings consisted of receiving and reviewing reports from recipients of coal severance tax funds, and proceedings of those sessions are digested in the Review of Agency Activities beginning on page 7.

For its fifth meeting, the Subcommittee visited the

Colstrip area to view operations at mines and power plants and to hear an explanation of the ideas and concepts that are the basis for a prospective development to utilize raw materials that have previously been regarded as unusable.

Persons who are interested in the details of the information provided to the Subcommittee during its Colstrip visit will find a digest in the Summary of Activities During Colstrip Area Tour incorporated into the minutes of the April 14 and 15 meeting. Subjects of attention were:

- mining procedures, reclamation techniques and results, and water monitoring projects at Peabody Coal Company's Big Sky Mine, Westmoreland Resources's Absaloka Mine, and Western Energy's Rosebud Mine;
- the LFC-COGEN project proposed at Colstrip by SGI International; and
- the power plants at Colstrip operated by Montana Power Company.

Except for a visit to the Montana Power Company's J.E. Corette Plant in Billings on July 15, the last four meetings were devoted to hearing, analyzing, and acting on proposals for legislative action in the 1989 session on subjects related to the coal severance tax.

The purpose of the tour of the Corette Plant was to learn about the possibility of designation of the facility for a retrofit as a pilot plant to demonstrate the commercial feasibility of the magnetohydrodynamics process developed in the research project at Butte. Details are included

in the minutes of the July 15, 1988, meeting and in the exhibits.

The minutes of the July 15, August 26, and September 21, 1988, meetings should be consulted for details on legislative requests received, supporting arguments, Subcommittee discussions, and disposition of the requests.

In response to the legislative requests heard and considered, the Subcommittee approved for introduction and recommended enactment of bills that would:

- amend the provisions of HB 252 passed by the 50th Legislature to reduce the severance tax on lignite after June 30, 1991, from 13% to 10% to conform with the rate reductions allowed other coal and to make the severance tax rate reductions fully applicable to other coal; and

- amend the definition of "contract sales price" in Title 15, chapter 35, MCA, to accord private royalties the same treatment as federal, state, and Indian royalties for purposes of assessing the severance tax, that is to deduct from the contract sales price that portion of the royalty paid that exceeds 15 cents a ton.

The texts of these recommended bills are in Appendix A.

On other requests that the Subcommittee found to merit support, resolutions were approved and addressed to the legislative leadership, the Governor, the Director of the Department of Highways, and the Coal Board that would urge the 51st Legislature:

- and the Coal Board to take necessary action to allow the earliest possible completion of Highway 314 (the Busby-Decker Road) in Big Horn County and Highway 384 (the Sarpy Creek Road) in Treasure County;
- to assure funding for the Coal Board to support the undercover law enforcement activities of the Eastern Coal Counties Task Force;
- to consider the needs of the coal impact area and the Coal Board's priorities there, to include those considerations in any legislation on infrastructure improvements, and to give the Coal Board priority for designation as the administering agency for any program of grants or aid to local governments for repair or renovation of infrastructure; and
- to face the challenge of acid rain legislation, both to promote new mines and coal production in Montana and to make Montana's coal acceptable on a nationwide sales/purchase basis; to promote the development of clean coal technology; and to designate these subjects as high priorities for the consideration of the Coal Tax Oversight Subcommittee during the 1989-90 interim.

The texts of these resolutions are included in Appendix B.

REVIEW OF AGENCY ACTIVITIES

5-18-203. Powers and duties of subcommittee. (1) The coal tax oversight subcommittee may:

- (a) review the programs financed by coal severance tax funds; and
 - (b) consider any matters relating to coal taxation.
- (2) The subcommittee shall report and make recommendations to the revenue oversight committee.

MONTANA CODE ANNOTATED

To fulfill its broad responsibilities under section 5-18-203, MCA, the Coal Tax Oversight Subcommittee devoted much of its first four meetings--or most of its meeting time--this interim to hearing reports from agencies financed wholly or partially by coal severance tax allocations, visiting coal tax-funded project sites, and inspecting mining operations and proposed industrial developments associated with the coal industry.

This review is germane to fulfillment of the Subcommittee's statutory charge, but even lacking that requirement the review is essential to a full understanding of the role of the severance tax in financing basic activities of state and local governments. The demand for appropriations surpasses all tax revenues available for distribution. That imbalance of demand and supply focuses acute attention upon any relatively large source of income. The visibility provided by its comparative size among Montana's revenue producers causes the coal severance tax to be viewed as a potential source of funding for virtually every new program conceived or as a lifeline for every existing program suffering from depleted resources.

After 50% of the severance tax revenue is deposited in the permanent trust as required by the Montana Constitution and another 12% is allocated to the highway reconstruction trust account under a priority allocation that will continue through fiscal year 1993, the balance available for distribution to specific purposes is substantially diminished. Also, ever visible to the legislative eye is the light at the end of the appropriations tunnel signifying that any unallocated remainder of coal severance tax proceeds will be deposited in the general fund to reduce the burden of the everyday costs of government on other taxpayers.

Because the competing requests for funding far exceed the available money, the necessity for a thorough and unprejudiced analysis of the needs of the applicants and of the efficacy of the previous beneficiary programs magnifies the importance of the oversight exercised by the Subcommittee. Following is a digest of the information received by the Subcommittee during its review process.

DEPARTMENT OF HIGHWAYS¹

Authorization of the Highway Reconstruction Trust Fund (RTF) program by the 1983 Legislature was recognition that federal allocations were insufficient to complete the interstate highway system while also rescuing the primary highway system from the deterioration resulting from more than 60 years of steadily increasing usage. To achieve these objectives in an accelerated cycle, the 1983 Legislature increased the fuel tax rates and dedicated other revenue, including a portion of the coal severance tax until June 30, 1993, to the RTF.

Allocations of coal severance tax money to the RTF were \$1.6 million in fiscal year 1986 (when its share was 2%) and \$5.9 million in fiscal year 1987 (a 7.76% share). For fiscal year 1988, the Office of Budget and Program Planning had estimated that \$7.9 million of coal severance tax money would be available to the RTF. In reality, however, severance tax proceeds during fiscal year 1988 sharply exceeded the estimates, and slightly over \$10 million was allocated to the RTF in that year. The estimate called for the RTF allocation during fiscal year 1989 to decline to about \$6.8 million and remain at about that level through fiscal year 1993. The tax reduction triggered by meeting the quota established in HB 252 will affect the tax collections, but that impact is beyond estimate at this writing. However, in the first two months of fiscal year 1989, Montana's coal production was about 5% higher than during the same two months a year earlier. The severance tax rate in fiscal year 1989, however, is about 16% lower.

The major expenditure of state highway funds is for maintenance and equipment, administration, and debt service; only 21.5% goes to match federal funds for construction and preconstruction, and 21.4% goes to RTF expenditures. Because maintenance costs remain relatively stable and because the federal match in construction and preconstruction categories far exceeds the state contribution, in periods of declining revenue little reduction is possible in those categories, and if cuts are necessary, they are absorbed in the RTF.

Elimination of the RTF would reduce the primary highway system program by more than 50%, or from about \$80 million to about \$35 million per year.

During the period from 1988 to 1993, the RTF program will

consist of 1,014 miles of noncoal tax-funded and 252 miles of coal tax-funded highway work. Coal tax pays for about one full year of RTF work during this period. Between 1980 and 1983, about 530 miles of the primary highway system were improved, and from 1984 through 1987, improvements covered 1,960 miles. By July 1, 1993, the Department of Highways promises that Montana will again have a good primary system, principally because of the availability of coal severance tax money.

The RTF program, however, allows no special priority for construction or reconstruction on roads that bear the brunt of coal industry traffic. Under the law, the Sarpy Creek Road in Treasure County and the Busby-Decker Road in Big Horn County, both of which have deteriorated under heavy coal industry traffic, are not eligible for RTF consideration because they are secondary highways and are not eligible for primary system funds. Coal Board grants have recognized the need of these roads but so far are insufficient to complete the projects.

DEPARTMENT OF FISH, WILDLIFE, AND PARKS²

The single most important funding source in support of the operations of the state parks system is the coal tax park acquisition fund, which is receiving no share of the coal severance tax proceeds during this biennium. A portion of the earnings of the fund is available to the department for purposes allowed by statute.

The problem was first recognized after the 1983 legislative session when trust earnings dropped below projections, and many mandated projects were shelved to avoid overdrawing the account. Responding to the emergency, the highest priority for funding was assigned

to the proper care of existing parks system sites. Acquisition and development of new sites were assigned lesser priorities.

The 1985 Legislature enacted HB 2, recommended by the Coal Tax Oversight Subcommittee, which allowed the use of earnings from the coal tax park acquisition fund to support the entire parks system by removing the constraint that the money could be expended only on coal tax-acquired sites. That Legislature also curtailed capital project spending by appropriating funds for only two new acquisitions. That appeared to have put the department on the road to a manageable future, but a detour occurred in the June 1986 Special Session when all general fund support for parks operations was removed and replaced with coal tax money. At the same time, the parks acquisition trust was temporarily capped when its previously allocated share of severance tax earnings was diverted to the general fund.

In the 10 years prior to 1986, use of the state parks system doubled to nearly three million visits annually, while 16 new sites were acquired by the parks acquisition trust. The total operations budget in 1977 dollars, however, remained relatively static. Facilities, particularly those at older established sites, continued to deteriorate into near obsolescence, hazards increased, and previous capital investments were in danger of being wiped out by deferred maintenance. At that time, newly available money was expended on new coal tax sites.

A question arose: Should sites, such as Spring Meadow Lake near Helena, Lake Elmo in Billings, and Glen Lake at Bozeman, be part of the state parks system or part of city or county parks systems?

Most state park sites do not provide for today's needs; their natural resources are being degraded and lost, and capital investments of the past continue to be lost because of deferred maintenance.

To put financing of the parks system in perspective, in 1977 the total general fund appropriation was \$487,947, and there was no coal tax appropriation. In 1985, the combined general fund and coal tax appropriation was almost \$2 million; however, by fiscal 1988 the general fund appropriation had disappeared and the coal tax appropriation was \$1 million, and the entire capital program was eliminated.

In 1975, the share of the coal severance tax allocated to the parks acquisition fund was 2.5% and its use was limited to acquisition of new sites. The allocation subsequently dwindled to 1.27%, and the fund is currently receiving nothing from severance tax proceeds. Allowable use of the proceeds of the fund now covers the entire range of parks system operations from maintenance to development to acquisition, but all of the limited funds available are presently used entirely for maintenance. Expected reductions in interest rates would result in only modest gains in projections for parks acquisition fund earnings from \$1.2 million in 1988 to \$1.3 million in 1993.

The future appears to offer three alternatives for the state parks system:

- (1) perpetuate the present system;
- (2) redirect funding to achieve a balanced program at the present level; or
- (3) augment funding to achieve a balanced program in the present system.

DEPARTMENT OF COMMERCE³

County Land Planning

Even though both the percentage allocation and the actual number of coal severance tax dollars received by the county land planning fund are declining, the program has increased in relative importance because other sources of revenue for local planning have dried up. Dedication of these state funds provided the citizens some limited assurance of good information and some good faith leadership to local governments in an area that has a positive effect on the future.

One-half of one percent of the total coal severance tax revenue is allocated to county land planning, and each county receives a base allocation of \$3,000 a year. The remaining money in the fund is distributed among the counties on a formula based 40% on area and 60% on population. The grant is to be used for "land planning purposes". Any money unspent by a recipient county must be returned to the education trust at the end of each biennium.

Since 1975, the county land planning fund has provided more than \$4.5 million to Montana counties, which have consistently used about 94% of the money each year. The county land planning fund is a simple but effective program that helps in solving development issues and needs.

STATE LIBRARY COMMISSION⁴

The coal severance tax allocation to libraries was

reduced from \$450,000 in 1985 to \$250,000 in 1987, and a further 25% decrease was anticipated in 1988. The cut caused the loss of nine staff members in 1987 and reductions in federation training, consulting assistance, purchases of books and materials, and travel funds as well as the elimination of important public information programs. Coupled with the impact of Initiative 105* and a Gramm-Rudman reduction of \$57,832 for the state library, the declining severance tax revenue will further reduce assistance to local libraries. Because academic libraries receive no inflation increases, libraries at the University of Montana and Montana State University faced cuts of up to one-third in serials and publications acquisitions. The state library federations coped through the consolidation of reference and information services, performance by local libraries of their own interlibrary loan work, nonreimbursement of headquarters libraries for costs, and absorption by member libraries of their own travel and training costs.

Supporters of library services expect to propose to the 1989 Legislature a bill similar to HB 603 from 1987 to provide state aid to public libraries. Although the size of the appropriation to be requested has not been decided, additional funds are needed to replace the reduction in coal severance tax allocation.

MONTANA ARTS COUNCIL⁵

State government support--consisting mainly of a share of the income from the parks acquisition fund--for more than

*Initiative 105, passed by the voters in 1986, limited property taxes on certain classes of property to the amount levied for taxable year 1986.

a decade was the principal source of funds for cultural programs in the state, but an effort is underway to broaden the funding base to include private sources. A new program of challenge grants is designed to encourage development of endowments. Federal funds for cultural purposes are very scarce, but nationwide, state support for this activity grew about 12% in 1987 because the states recognized the relationship of cultural activities to economic growth. An artist can establish a profitable business by creating a product from raw materials and selling it out of state to bring in new wealth. The \$1.2 million of fund interest allowed for cultural grants can fund about one-third of the dollar amount requested or about two-thirds of the number of grants requested. No federal money is available for historical rehabilitation; since 1981, direct grants have not been available, but tax breaks have been allowed.

Commitment of funds for cultural projects is needed at every level of government, but I-105 has impaired local level participation. Adjustment is needed to provide funding at the local level.

The 1987 Legislature redirected the flow of severance tax money to deny new funds to the cultural and aesthetic program, although a share of the earnings of the trust fund is still available for that program.

Issues expected to be addressed during the 1989 session include:

Facility Development--Construction and renovation of historical museums and visual and performing arts facilities continue to be critical needs in Montana.

Endowment Development--The challenge grant will

continue to provide long-range stabilization of cultural organizations and is critical for the operation of cultural facilities. Challenge grant applications are anticipated from a number of organizations.

Rural and Small Communities--Widening of the budget gap between rural and urban arts and cultural organizations affects the staffing of executive positions. Arts centers that previously hired entry level professional directors are now hiring people with little or no training in arts center administration. To counter the noticeable decrease in applications for cultural and aesthetic project grants from small communities, a "small grant" category has been created that will use a much simpler application form.

The capping of the parks acquisition fund during fiscal years 1987 through 1989 resulted in an estimated principal loss of about \$4 million. Because one-third of the earnings of the fund go to cultural and aesthetic projects, that principal loss results in a decline in estimated annual earnings of about \$400,000, or about \$135,000 lost each year for cultural and aesthetic project grants.

OFFICE OF PUBLIC INSTRUCTION⁶

Revenue for the School Foundation Program comes from a variety of sources, but one of those sources--earnings of the education trust--dropped substantially from the 1987 to the 1989 biennium. The cause of the drop was the huge appropriation by the 1987 Legislature from the education trust to balance the general fund budget. Allocations to

the School Foundation Program from the coal severance tax were increased at the expense of additional contributions to the education trust. Administration of the vocational-technical centers was transferred from the Office of Public Instruction (OPI) to the Board of Regents of Higher Education. Responsibility for Adult Basic Education (ABE) remains with OPI, but appropriation levels to provide those services at 34 locations are declining.

Enrollment in kindergarten through 12th grade is projected to increase, with an estimate of 153,709 students in K-12 during the 1989 fiscal year. More than 3,000 persons are expected to be serviced by ABE centers.

High priority should be afforded to replacement of funds diverted from the education trust. The alternative approach would be to focus on a coordinated general fund and coal severance tax balance that will adequately fund the constitutionally mandated public education system.

COAL BOARD⁷

In 11 years of activity to assist in the mitigation of the local impacts of coal development, the Coal Board has approved 195 applications for coal impact grants totaling \$60.5 million. In that same period, about \$6.2 million of available funds was allowed to revert to the education trust. The \$60.5 million granted was matched by \$54.1 million of local government funds. The Coal Board's activities are in a passive phase because of redirection by the Legislature of funds that would otherwise have been used for grants.

Among the continuing activities supported by the Coal

Board are:

- (1) the ground water monitoring program near the strip mines in Rosebud and Big Horn Counties;
- (2) the water quality monitoring project in the Flathead River below the Canadian coal developments;
- (3) the assessments of the causes of decreased alfalfa and hay production in selected subirrigated hay meadows in southeastern Montana;
- (4) the Big Horn County chemical abuse program;
- (5) funding reconstruction plans for Highway 314 (Busby-Decker) in Big Horn County;
- (6) the undercover antidrug efforts of the Eastern Coal Counties Task Force; and
- (7) other local coal impact-related projects in southeastern Montana.

In fiscal year 1990, the Coal Board's allocation from the severance tax, which at 1.52% this biennium has ruled out new projects, will be restored to 6.65%. At that time, the Coal Board will once again consider applications for grants or loans for impact needs.

The Coal Board submitted a proposal for the establishment of a statewide infrastructure board that would utilize coal severance tax funds and other revenue to implement a program for the replacement of infrastructure throughout the state. The infrastructure board would use the

funding techniques developed by the Coal Board and used to meet local coal impact needs.

The Subcommittee declined to recommend legislation on this proposal during this interim, but it did submit a resolution expressing support for the concept.

GROWTH THROUGH AGRICULTURE⁸

The Montana Growth Through Agriculture Act established by the 1987 Legislature is being implemented through joint efforts of the Department of Agriculture and the Department of Commerce.

The program has three major components:

- establishing a seed capital account to make investments in new agricultural products and processes;
- helping increase both foreign and domestic market opportunities for Montana agricultural products; and
- setting up agricultural business incubators in small communities designed to offer services such as training, management consultation, accounting, or office space to eligible agriculture businesses.

In addition to funding individual projects, the program also provides technical assistance to people developing business plans, analyzing markets, and putting together loan packages with other financial sources.

A significant program activity was the allocation of \$150,000 to participate in the effort to establish a

Montana foreign trade office in Tokyo, Japan.

Another program activity is the support of an effort at a new plant in Dillon to produce hay cubes for foreign sale.

Two marketing cooperatives and a beef packing plant are among the other possible industries suggested as loan applicants.

SCIENCE AND TECHNOLOGY ALLIANCE⁹

In a case testing the validity of the Science and Technology Development Board Seed Capital Bond Act, the Montana Supreme Court, on July 21, 1988, found the law invalid because it:

- pledged the credit of the state to secure bonds issued by the Montana Science and Technology Development Board, the proceeds of which would be used for the benefit of private businesses;
- delegated legislative power to the Montana Science and Technology Development Board in violation of the Montana Constitution; and
- failed to mention in its title the pledge of credit of the state to secure bonds issued by the Montana Science and Technology Board.

This ruling invalidated a major activity of the Science and Technology Alliance, that of providing funding support for research and development projects by private enterprise.

In other actions, the Alliance's research and development activity funded at least seven projects, including three centers of excellence: biotechnology (University of Montana); value-added material processing for forest products, minerals products, and agricultural products (Montana Tech); and new materials science and processing (Montana State University).

The Alliance usually asks a return of twice its investment over an indefinite period, usually at 0.25% or 0.5% of gross sales that result from commercialization of the research or from technology that stems from the research. The university units want co-ownership of patents or of the intellectual properties that emerge from the research on a 50-50 basis. In one company that has a license for technology in which the Alliance has invested, the Alliance has not only a royalty agreement but also a 5% equity, so it will participate in future profits or benefit from future liquidation.

In regard to research on coal drying and beneficiation, the Alliance in the previous biennium invested \$350,000 in the Western Energy Company project in Butte. Western Energy believes the process has great potential and is seeking funding for a multi-million dollar pilot plant project.

BOARD OF REGENTS OF HIGHER EDUCATION¹⁰

The number of students served in the exchanges of the Western Interstate Commission for Higher Education (WICHE) and the Washington, Alaska, Montana and Idaho (WAMI) Program is declining because of the reduction of available funding. To place a student in the veterinary medicine program at Colorado State University, Montana

must provide a \$2,000 yearly subsidy. Support for students in some fields, such as dentistry, where the demand is declining has been reduced to meet the higher demand in other disciplines. A Montana student pays an amount equal to the in-state tuition at the school he attends, and the State of Montana pays the additional sum to equal the per-student cost for out-of-state tuition at that school. Research has shown that about 40% of Montana's state-supported WAMI graduates come back to Montana to practice, and many WAMI students originally from other states are also practicing in Montana.

The change in the administration of the vocational-technical centers was reported to be working well. The law allowing a voted levy was found to be unworkable. A preferable alternative when that law expires in 1989 is to replace it with a two-mill statewide levy.

In comparing the costs of higher education, the average expenditure per student in 1987 was \$4,238 at Montana colleges and universities and \$7,200 at the University of Wyoming. The annual tuition charge at the University of Wyoming is about \$700 per student, and in Montana it is about \$1,300 per student, which indicates that the State of Wyoming is putting more general fund money into its university system than Montana is.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION¹¹

A detailed narrative report of the uses of coal severance tax funds in the Alternative Energy, Renewable Resource Development, Water Development, and Conservation Districts programs may be found as Exhibit No. 3 with the minutes of the February 5, 1988, meeting of the Subcommittee.

In addition to the explanation of the use of coal severance tax funds by the Department of Natural Resources and Conservation (DNRC), comments were presented on the proposal for a right-of-way to transport Yellowstone River water to Colstrip for a project using coal taken off as overburden and containing large quantities of dirt and impurities. The proposal is an alternative to the original plan for a coal liquification and cogeneration plant and would break the coal down and turn it into other byproducts while generating electricity. Because it would use less than 50,000 tons of coal per year and generate less than 50 megawatts of electricity, the project is not subject to the provisions of the Major Facility Siting Act. Utilization of a waste product qualifies the project under the federal Public Utilities Regulatory Policies Act of 1978, and the electricity generated would be sold to the Montana Power Company.

Most of the money available in the federal Clean Coal Technology program went to eastern states, a cause for concern to westerners who believe that clean coal technology should benefit all parts of the country.

In addition to monitoring coal research projects, DNRC is working on an appropriate national energy policy and its implications for Montana.

COAL PRODUCERS AND PURCHASERS ANSWER CHALLENGE

The stage was set for the eventual across-the-board reduction of Montana's highest-in-the-nation coal severance tax when the 1985 Legislature enacted the Governor's proposal for a tax credit based on sales under new or extended contracts. Entitled the New Coal Production Incentive Tax Credit Act of 1985 (Chapter 636, Laws of 1985), application of the law's provisions was limited to coal sold under contracts negotiated or extended during a 30-month period ending June 30, 1987. That termination date was extended for 18 months by the 1987 Legislature (Chapter 608, Laws of 1987).

The 1985 act allowed a tax credit of one-third for qualifying coal. The 1987 amendments in HB 252 allowed increased credits to correspond with the reductions in the basic severance tax (Chapter 608, Laws of 1987).

The continued importuning of the coal industry and its utility industry customers convinced the 1987 Legislature that across-the-board reductions in the severance tax rate were requisites to the future expansion of the industry in Montana and to continuance of the high-wage jobs it provides. The result was enactment of a three-stage tax reduction over four years that ultimately will halve the maximum severance tax rate to 15%.

The Governor approved HB 252 conditionally. His proposal allowed acceleration by one year to July 1, 1988, of the effectiveness of the first step in the reduction (to 25%) and the ultimate reduction of the maximum rate to 15% on July 1, 1991. To win the Governor's approval, however, a prerequisite coal production and sales accomplishment was demanded. The threshold set in the

Governor's proposal was production and sale during fiscal year 1988 of 32.2 million tons of Montana coal (the average of the annual production during calendar years 1983, 1984, 1985, and 1986). Incorporation of the proposed sales and production target figures into HB 252 established an immediate goal for the industry and a perceptible guideline for an interested public to measure the efforts of the industry to prove its ability to deliver.

The reaction of the coal industry and its utility customers was immediate: the production and sales quota was surpassed in less than 10 months.

According to the statistics compiled by the Solid Minerals Bureau, Natural Resource and Corporation Tax Division, Department of Revenue, for production on which severance tax payments were received during fiscal year 1988, Montana's mines exceeded the HB 252 quota by almost 5.5 million tons with an output of 37,515,560 tons. State fiscal officials and coal industry executives alike are looking hopefully to the future and the continued growth of Montana's coal economy.

CROW TRIBE PREVAILS IN LITIGATION¹²

By refusing to hear an appeal by the State of Montana, the U.S. Supreme Court, in January 1988, affirmed a decision by the Ninth Circuit Court of Appeals in favor of the Crow Tribe. At issue was the ownership of more than \$27 million of Montana coal severance tax and accumulated interest held in escrow by the federal District Court.

Final ramifications of the decision, which are still uncertain, could have a massive fiscal impact on the State of Montana.

The Crow Tribe, in 1978, initiated litigation over severance taxes collected on coal produced from the Ceded Strip, an adjacent area that was detached from the Crow Reservation in 1904 and opened to homesteading. Title to the surface passed subsequently to nontribal owners. The rights to the coal underlying the surface, in an area where in the 1970s Westmoreland Resources developed its Absaloka Mine, remained with the Crow Tribe.

The federal District Court initially ruled in favor of the state, a decision that was overturned by the Ninth Circuit Court, which remanded the case to the District Court. The Supreme Court, in 1982, sustained the circuit court.

In 1983, the federal District Court ordered the establishment of the escrow, into which subsequent severance tax collections were deposited.

On retrial, the District Court, in 1985, again ruled for the state, a decision that was reversed by the Ninth

Circuit Court in June 1987. The Supreme Court's refusal to hear an appeal from the circuit court was the final step in the lengthy litigation. Yet unresolved, however, are the Tribe's constructive trust claims for severance taxes paid before 1983 and for the gross proceeds tax payments since 1975. Settlement of those issues would require determination of how much of Westmoreland's pre-1983 taxes relate to Crow land and how much to state school land. The constructive trust issues are probably still several years away from settlement.

Severance tax collected for the five years ending in September 1987, plus interest through January 12, 1988, totals \$27,442,357.

From March 1975 through September 1982, the amount of tax collected plus interest accrued at 12% per year is about \$77 million. Gross proceeds taxes collected plus accrued interest would add another \$10.4 million to bring the total at issue to more than \$110 million.

The only available source of state money to settle such an obligation appears to be the permanent coal tax trust. Reduction of the trust by such a massive amount would be felt immediately in reduced flow of earnings into the general fund.

NOTES

1. Department of Highways Report to the Coal Tax Oversight Subcommittee, Sept. 11, 1987
2. Report of Department of Fish, Wildlife, and Parks, Sept. 11, 1987
3. Report of Department of Commerce, Dec. 11, 1987.
4. Reports from the State Librarian, Dec. 11, 1987, and July 15, 1988.
5. Reports of the Montana Arts Council and the Montana Historical Society, Dec. 11, 1987.
6. Report of Office of Public Instruction, Dec. 11, 1987.
7. Report of the Coal Board, Dec. 11, 1987.
8. Reports from Department of Agriculture and Department of Commerce, Feb. 5, 1988.
9. Report of Science and Technology Board, Feb. 5, 1988, and White vs. State, 45, St. Rep. 1310.
10. Report of the Commissioner of Higher Education, Feb. 5, 1988.
11. Report of Department of Natural Resources and Conservation, Feb. 5, 1988.
12. Reports by the Department of Justice and the Office of Budget and Program Planning, Feb. 5, 1988.

APPENDIX A

RECOMMENDED LEGISLATION

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE COAL TAX OVERSIGHT SUBCOMMITTEE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE RATE OF
6 SEVERANCE TAX ON CERTAIN COAL; AMENDING SECTIONS 15-35-102,
7 15-35-103, AND 15-35-202, MCA; AND PROVIDING AN EFFECTIVE
8 DATE AND AN APPLICABILITY DATE."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 **Section 1.** Section 15-35-102, MCA, is amended to read:

12 "15-35-102. Definitions. As used in this chapter, the
13 following definitions apply:

14 (1) "Agreement" means a signed contract that is valid
15 under Montana law between a coal mine operator and a
16 purchaser or broker for the sale of coal that is produced in
17 Montana.

18 (2) (a) "Base consumption level" for a purchaser,
19 except as provided in subsection (2)(b), applies only for
20 the term of an agreement in effect as of December 31, 1984,
21 and means the lesser of:

22 (i) the volume of coal purchased during calendar year
23 1986 from all Montana coal mine operators; or

24 (ii) the greater of:

25 (A) the arithmetic average volume of coal purchased



1 during calendar years 1983 and 1984 from all Montana coal
2 mine operators; or

3 (B) 90% of the maximum tonnage provided for in any
4 agreement executed prior to January 1, 1985, for which the
5 highest scheduled minimum quantity of coal stipulated by the
6 terms of the agreement as they existed on January 1, 1985,
7 has not been purchased at any time during the term of the
8 agreement, plus the arithmetic average volume of coal
9 purchased during calendar years 1983 and 1984 from all
10 Montana coal mine operators under all other agreements.

11 (b) If the volume calculated in subsection (2)(a)(i)
12 is less than one-third of the volume calculated in
13 subsection (2)(a)(ii), the base consumption level is the
14 volume calculated in subsection (2)(a)(ii).

15 (3) (a) Except as provided in subsection (3)(b), "base
16 production level" for a coal mine operator applies only for
17 the term of an agreement in effect as of December 31, 1984,
18 and means the lesser of:

19 (i) the arithmetic average volume of coal produced in
20 Montana and sold to a purchaser in calendar years 1983 and
21 1984; or

22 (ii) the volume of coal produced in Montana and sold to
23 a purchaser in 1986.

24 (b) If the amount calculated in subsection (3)(a)(ii)
25 is less than one-third of the amount calculated in

1 subsection (3)(a)(i), the base production level is the
2 amount calculated in subsection (3)(a)(i).

3 (4) "Broker" means any person who resells Montana
4 coal.

5 (5) "Contract sales price" means either the price of
6 coal extracted and prepared for shipment f.o.b. mine,
7 excluding that amount charged by the seller to pay taxes
8 paid on production, or a price imputed by the department
9 under 15-35-107. Contract sales price includes all royalties
10 paid on production, no matter how such royalties are
11 calculated. However, with respect to royalties paid to the
12 government of the United States, the state of Montana, or a
13 federally recognized Indian tribe, the contract sales price
14 includes only:

15 (a) for quarterly periods ending on and after
16 September 30, 1984, 15 cents per ton plus 75% of the
17 difference between 15 cents per ton and the amount of such
18 federal, state, and tribal government royalties actually
19 paid;

20 (b) for quarterly periods ending on and after
21 September 30, 1985, 15 cents per ton plus 50% of the
22 difference between 15 cents per ton and the amount of such
23 federal, state, and tribal government royalties actually
24 paid;

25 (c) for quarterly periods ending on and after

1 September 30, 1986, 15 cents per ton plus 25% of the
2 difference between 15 cents per ton and the amount of such
3 federal, state, and tribal government royalties actually
4 paid; and

5 (d) for quarterly periods ending on and after
6 September 30, 1987, 15 cents per ton.

7 (6) "Department" means the department of revenue.

8 (7) "Energy conversion process" includes any process
9 by which coal in the solid state is transformed into slurry,
10 gas, electric energy, or any other form of energy.

11 (8) "Incremental production" means that quantity of
12 coal produced annually by a coal mine operator and sold to a
13 qualified purchaser that exceeds the base production level
14 of the coal mine operator for that purchaser, but only to
15 the extent the quantity of coal exceeds that purchaser's
16 base consumption level from all Montana producers.

17 (9) "Produced" means severed from the earth.

18 (10) "Purchaser" means a person who purchases or
19 contracts to purchase Montana coal directly from a coal mine
20 operator or indirectly from a broker and who utilizes that
21 coal in any industrial, commercial, or energy conversion
22 process. A coal broker or any other third party intermediary
23 is not a purchaser under the provisions of this chapter.

24 (11) "Qualified purchaser" means a purchaser whose
25 purchases of Montana coal in any given year exceed his base

1 consumption level. A purchaser of Montana coal who enters
2 into a coal agreement with another purchaser or a broker
3 that causes a reduction in the base consumption level of a
4 purchaser is not a qualified purchaser.

5 (12) "Strip mining" is defined in 82-4-203 and includes
6 "surface mining".

7 (13) "Taxes paid on production" includes any tax paid
8 to the federal, state, or local governments upon the
9 quantity of coal produced as a function of either the volume
10 or the value of production and does not include any tax upon
11 the value of mining equipment, machinery, or buildings and
12 lands, any tax upon a person's net income derived in whole
13 or in part from the sale of coal, or any license fee.

14 (14) "Ton" means 2,000 pounds.

15 (15) "Underground mining" means a coal mining method
16 utilizing shafts and tunnels and as further defined in
17 82-4-203."

18 **Section 2.** Section 15-35-103, MCA, is amended to read:

19 "15-35-103. Severance tax -- rates imposed --
20 ~~exemptions.~~ (1) ~~Except-as-provided-in-subsection-(2)~~ Subject
21 to the provisions of 15-35-202 allowing a new coal
22 production incentive tax credit, a severance tax is imposed
23 on each ton of coal produced in the state in accordance with
24 the following schedule:

25 ~~{a}--Fiscal-Years-1988-and-1989:~~

1	Heating-quality	Surface--	Underground
2	{Btu-per-pound	Mining--	Mining---
3	---of-coal):	--	
4	Under-7,000	12-cents-or	5-cents-or
5	--	20%-of-value	3%-of-value
6	7,000-8,000	22-cents-or	8-cents-or
7	--	30%-of-value	4%-of-value
8	8,000-9,000	34-cents-or	10-cents-or
9	--	30%-of-value	4%-of-value
10	Over-9,000	40-cents-or	12-cents-or
11	--	30%-of-value	4%-of-value
12	{b)--Fiscal-Year-1990:		
13	Heating-quality	Surface--	Underground
14	{Btu-per-pound	Mining--	Mining---
15	---of-coal):	--	
16	Under-7,000	12-cents-or	5-cents-or
17		13%-of-value	3%-of-value
18	7,000-8,000	22-cents-or	8-cents-or
19		25%-of-value	4%-of-value
20	8,000-9,000	34-cents-or	10-cents-or
21		25%-of-value	4%-of-value
22	Over-9,000	40-cents-or	12-cents-or
23		25%-of-value	4%-of-value
24	{c)--Fiscal-Year-1991-and-Thereafter:		
25	Heating-quality	Surface--	Underground

	Mining--	Mining---
1 (Btu-per-pound		
2 ---of-coal):	-	
3 Under-7,000	12-cents-or	5-cents-or
4	13%-of-value	3%-of-value
5 7,000-8,000	22-cents-or	8-cents-or
6	20%-of-value	4%-of-value
7 8,000-9,000	34-cents-or	10-cents-or
8	20%-of-value	4%-of-value
9 Over-9,000	40-cents-or	12-cents-or
10	20%-of-value	4%-of-value

11 (2)--(a)-(i)-On-or-before-October---17---1988,---the
 12 department--shall-determine-the-total-number-of-tons-of-coal
 13 produced-in-Montana-and-sold-from-July-17-1987-through-June
 14 30,1988.-If-the-department-finds-that--these--sales--exceed
 15 32.2--million--tons--(which-is-the-average-total-yearly-coal
 16 sales-for-calendar-years-1983,1984,1985,--and--1986),--the
 17 rate---of---the---coal---severance---tax---is---as---set---forth---in
 18 subsections-(2)(b)-through-(2)(d):

19 (ii)-If-any-facility-that-burned-Montana--coal--at--any
 20 time--from--July-17-1987-to-June-30,1988,--does-not-operate
 21 during-a-portion-of-that-period-due-to-mechanical-failure-or
 22 catastrophic-act-of-God,--the-department-shall-determine--the
 23 average-monthly-sales-of-Montana-coal-to-the-facility-during
 24 its-operation-and-multiply-this-figure-by-12.-The-department
 25 shall--include-the-product-of-this-calculation-in-making-its

1 determination-of-coal-produced-in-Montana-and-sold-from-July
 2 17-1987-through-June-30,1988-

3 (b)--The-severance-tax-imposed-pursuant--to--subsection
 4 (2)(a)--on--each-ton-of-coal-produced-in-the-state-from-July
 5 17-1988-through-June-30,1990,--is:

6 (a) After June 30, 1988, and before July 1, 1990:

7 Heating quality	Surface	Underground
8 (Btu per pound	Mining	Mining
9 of coal):		
10 Under 7,000	12-cents-or	5-cents-or
11	17% of value	3% of value
12 7,000-8,000	22-cents-or	8-cents-or
13 <u>and over</u>	25% of value	4% of value
14 8,000-9,000	34-cents-or	10-cents-or
15	25%-of-value	4%-of-value
16 Over-9,000	40-cents-or	12-cents-or
17	25%-of-value	4%-of-value

18 (c)--The-severance-tax-imposed-pursuant--to--subsection
 19 (2)(a)--on--each-ton-of-coal-produced-in-the-state-from-July
 20 17-1990-through-June-30,1991,--is:

21 (b) After June 30, 1990, and before July 1, 1991:

22 Heating quality	Surface	Underground
23 (Btu per pound	Mining	Mining
24 of coal):		
25 Under 7,000	12-cents-or	5-cents-or

1		13% of value	3% of value
2	7,000-87,000	22-cents-or	8-cents-or
3	<u>and over</u>	20% of value	4% of value
4	87,000-97,000	34-cents-or	10-cents-or
5		20%-of-value	4%-of-value
6	Over-97,000	40-cents-or	12-cents-or
7		20%-of-value	4%-of-value

8 ~~(d) -- The severance tax imposed pursuant to subsection~~
 9 ~~(2)(a) -- on each ton of coal produced in the state after June~~
 10 ~~30, 1991, is:~~

11 (c) After June 30, 1991:

12	Heating quality	Surface	Underground
13	(Btu per pound	Mining	Mining
14	of coal):		
15	Under 7,000	12-cents-or	5-cents-or
16		13% <u>10%</u> of value	3% of value
17	7,000-87,000	22-cents-or	8-cents-or
18	<u>and over</u>	15% of value	4% of value
19	87,000-97,000	34-cents-or	10-cents-or
20		15%-of-value	4%-of-value
21	Over-97,000	40-cents-or	12-cents-or
22		15%-of-value	4%-of-value

23 ~~(3)(2)~~ "Value" means the contract sales price.

24 ~~(4)(3)~~ The formula which yields the greater amount of
 25 tax in a particular case shall be used at each point on

1 these schedules.

2 ~~(5)(4)~~ A person is not liable for any severance tax
3 upon 50,000 tons of the coal he produces in a calendar year,
4 except that if he produces more than 50,000 tons of coal in
5 a calendar year, he will be liable for severance tax upon
6 all coal produced in excess of the first 20,000 tons.

7 ~~(6)(5)~~ A new coal production incentive tax credit may
8 be claimed on certain coal as provided in 15-35-202."

9 **Section 3.** Section 15-35-202, MCA, is amended to read:

10 "15-35-202. New coal production incentive tax credit
11 allowed -- application limited. (1) A coal mine operator is
12 entitled to a new coal production incentive tax credit
13 against the tax imposed under 15-35-103 of:

14 ~~(a) 33-1/3%--for--incremental--production--sold--during~~
15 ~~calendar-years-1985-and-1986;~~

16 ~~(b)--50%--for--incremental--production--sold--from--January~~
17 ~~17--1987--until--June--30--1988--and~~

18 ~~(c) 40% for incremental production sold from July 1,~~
19 ~~1988--until--June--30~~ after June 30, 1988, and before July 1,
20 1990; and provided,--however,--that--if--the--production--quota
21 established--in--15--35--103(2)(a)(i)--is--not--met,--the--tax--credit
22 for--this--period--is--50%--for--fiscal--year--1989--and--40%--for
23 fiscal--year--1990.

24 (b) 25% for incremental production sold after June 30,
25 1990, and before July 1, 1991.

1 (2) (a) A coal mine operator is entitled to a new coal
 2 production incentive tax credit against the tax imposed
 3 under 15-35-103 on incremental production for the entire
 4 term of an agreement, except as provided in subsection (3),
 5 and is entitled to adjustment of the base consumption level
 6 and the base production level as defined in 15-35-102, if
 7 the incremental production resulted from coal purchases
 8 under:

9 (i)(a) an existing agreement which was extended
 10 between--January--17--1985,--and--December--31,--1988 after
 11 December 31, 1984, and before July 1, 1990, for at least a
 12 5-year period; or

13 (ii)(b) a new agreement that was executed between
 14 January--17--1985,--and--December--31,--1988 after December 31,
 15 1984, and before July 1, 1990.

16 (b)--The-rate-of-credit-allowed-under-subsection-(2)(a)
 17 is:

18 (i)--33-1/3%--for--incremental--production--sold---from
 19 January-17-1985,--until--December-31,--1986;

20 (ii)--50%--for--any--incremental--production--sold--from
 21 January-17-1987,--until--June-30,--1988;

22 (iii)--40%--for--any--incremental--production--sold--from--July
 23 17-1988,--until--June-30,--1990.--However,--if--the--production
 24 quota--established--in--15-35-103(2)(a)(i)--is--not--met,--the--tax
 25 credit--for--this--period--is--50%--for--fiscal--year--1989--and--40%

1 ~~for-fiscal-year-1990-~~

2 ~~(iv)-25%--for-any-incremental-production-sold-from-July~~
 3 ~~17-1990,-until-June-30,-1991,-and~~

4 ~~(v)--25%-after-June-30,-1991,-if-the--production--quota~~
 5 ~~in-15-35-103(2)(a)(i)-has-not-been-met-~~

6 (3) No credit may be claimed for coal produced prior
 7 to January 1, 1985."

8 **Section 4. Extension of authority.** Any existing
 9 authority to make rules on the subject of the provisions of
 10 [this act] is extended to the provisions of [this act].

11 **Section 5. Saving clause.** [This act] does not affect
 12 rights and duties that matured, penalties that were
 13 incurred, or proceedings that were begun before [the
 14 effective date of this act].

15 **Section 6. Effective date -- applicability.** [This act]
 16 is effective July 1, 1989, and applies to payments of
 17 severance tax that are due and payable after June 30, 1989,
 18 on coal mined after March 31, 1989.

-End-

1 BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE COAL TAX OVERSIGHT SUBCOMMITTEE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR UNIFORM
6 TAXATION OF ALL COAL ROYALTIES; AMENDING SECTION 15-35-102,
7 MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN
8 APPLICABILITY DATE."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 15-35-102, MCA, is amended to read:

12 "15-35-102. Definitions. As used in this chapter, the
13 following definitions apply:

14 (1) "Agreement" means a signed contract that is valid
15 under Montana law between a coal mine operator and a
16 purchaser or broker for the sale of coal that is produced in
17 Montana.

18 (2) (a) "Base consumption level" for a purchaser,
19 except as provided in subsection (2)(b), means the lesser
20 of:

21 (i) the volume of coal purchased during calendar year
22 1986 from all Montana coal mine operators; or

23 (ii) the greater of:

24 (A) the arithmetic average volume of coal purchased
25 during calendar years 1983 and 1984 from all Montana coal



1 mine operators; or

2 (B) 90% of the maximum tonnage provided for in any
3 agreement executed prior to January 1, 1985, for which the
4 highest scheduled minimum quantity of coal stipulated by the
5 terms of the agreement as they existed on January 1, 1985,
6 has not been purchased at any time during the term of the
7 agreement, plus the arithmetic average volume of coal
8 purchased during calendar years 1983 and 1984 from all
9 Montana coal mine operators under all other agreements.

10 (b) If the volume calculated in subsection (2)(a)(i)
11 is less than one-third of the volume calculated in
12 subsection (2)(a)(ii), the base consumption level is the
13 volume calculated in subsection (2)(a)(ii).

14 (3) (a) Except as provided in subsection (3)(b), "base
15 production level" for a coal mine operator means the lesser
16 of:

17 (i) the arithmetic average volume of coal produced in
18 Montana and sold to a purchaser in calendar years 1983 and
19 1984; or

20 (ii) the volume of coal produced in Montana and sold to
21 a purchaser in 1986.

22 (b) If the amount calculated in subsection (3)(a)(ii)
23 is less than one-third of the amount calculated in
24 subsection (3)(a)(i), the base production level is the
25 amount calculated in subsection (3)(a)(i).

1 (4) "Broker" means any person who resells Montana
2 coal.

3 (5) "Contract sales price" means either:

4 (a) the price of coal extracted and prepared for
5 shipment f.o.b. mine, excluding:

6 (i) that amount charged by the seller to pay taxes
7 paid on production; and

8 (ii) that amount charged by the seller in excess of 15
9 cents a ton to pay royalties paid on coal produced and sold;
10 or

11 (b) a price imputed by the department under 15-35-107.
12 Contract--sales--price--includes--all--royalties---paid---on
13 production,--no--matter--how--such--royalties--are--calculated.
14 However,--with--respect--to--royalties--paid--to--the--government--of
15 the--United--States,--the--state--of--Montana,--or--a--federally
16 recognized--Indian--tribe,--the--contract--sales--price--includes
17 only:

18 (a)--for--quarterly--periods--ending---on---and---after
19 September--30,--1984,--15--cents--per--ton--plus--75%--of--the
20 difference--between--15--cents--per--ton--and--the--amount--of--such
21 federal,--state,--and--tribal--government--royalties--actually
22 paid;

23 (b)--for--quarterly--periods--ending---on---and---after
24 September--30,--1985,--15--cents--per--ton--plus--50%--of--the
25 difference--between--15--cents--per--ton--and--the--amount--of--such

1 federal, state, and tribal government royalties actually
2 paid;

3 (c) for quarterly periods ending on and after
4 September 30, 1986, 15 cents per ton plus 25% of the
5 difference between 15 cents per ton and the amount of such
6 federal, state, and tribal government royalties actually
7 paid; and

8 (d) for quarterly periods ending on and after
9 September 30, 1987, 15 cents per ton.

10 (6) "Department" means the department of revenue.

11 (7) "Energy conversion process" includes any process
12 by which coal in the solid state is transformed into slurry,
13 gas, electric energy, or any other form of energy.

14 (8) "Incremental production" means that quantity of
15 coal produced annually by a coal mine operator and sold to a
16 qualified purchaser that exceeds the base production level
17 of the coal mine operator for that purchaser, but only to
18 the extent the quantity of coal exceeds that purchaser's
19 base consumption level from all Montana producers.

20 (9) "Produced" means severed from the earth.

21 (10) "Purchaser" means a person who purchases or
22 contracts to purchase Montana coal directly from a coal mine
23 operator or indirectly from a broker and who utilizes that
24 coal in any industrial, commercial, or energy conversion
25 process. A coal broker or any other third party intermediary

1 is not a purchaser under the provisions of this chapter.

2 (11) "Qualified purchaser" means a purchaser whose
3 purchases of Montana coal in any given year exceed his base
4 consumption level. A purchaser of Montana coal who enters
5 into a coal agreement with another purchaser or a broker
6 that causes a reduction in the base consumption level of a
7 purchaser is not a qualified purchaser.

8 (12) "Strip mining" is defined in 82-4-203 and includes
9 "surface mining".

10 (13) "Taxes paid on production" includes any tax paid
11 to the federal, state, or local governments upon the
12 quantity of coal produced as a function of either the volume
13 or the value of production and does not include any tax upon
14 the value of mining equipment, machinery, or buildings and
15 lands, any tax upon a person's net income derived in whole
16 or in part from the sale of coal, or any license fee.

17 (14) "Ton" means 2,000 pounds.

18 (15) "Underground mining" means a coal mining method
19 utilizing shafts and tunnels and as further defined in
20 82-4-203."

21 **Section 2.** Saving clause. [This act] does not affect
22 rights and duties that matured, penalties that were
23 incurred, or proceedings that were begun before [the
24 applicability date of this act].

25 **Section 3.** Effective date -- applicability. [This act]

1 is effective July 1, 1991, and applies to coal produced and
2 sold after March 31, 1991.

-End-

APPENDIX B

RECOMMENDED RESOLUTIONS

RESOLUTION

BE IT RESOLVED BY THE COAL TAX OVERSIGHT SUBCOMMITTEE OF THE 50TH MONTANA LEGISLATURE:

That after reviewing significant testimony adduced at public meetings during the 1987-1988 interim regarding the deplorable condition of Highway 314 and the Sarpy Creek roads, the Subcommittee is asking the 1989 Montana Legislature to support its position urging the Montana Coal Board to transfer funds for the reconstruction of two coal impacted highway projects in Big Horn and Treasure Counties respectively.

WHEREAS, County Commissioners from Big Horn County and the general public have presented the Subcommittee with an innovative sharing plan to finance construction of 14.0 miles of highway reconstruction as a single project of Montana 314 between Decker and Busby, Montana, and

WHEREAS, without the award of \$2,800,000 from the Montana Coal Board, completion of this project will not occur until the late 1990s, and

WHEREAS, the road in its present condition constitutes a genuine hazard to the traveling public, and

WHEREAS, Big Horn County's plan calls for it to contribute nearly 50% of the costs of the project, and

WHEREAS, the road is primarily utilized for coal haulage and for use of coal mine employees, and

WHEREAS, the Montana Coal Board's primary function since its creation in 1975 is directed to funding projects directly impacted by coal development, and

WHEREAS, the Coal Board can expect to receive \$3.4 million in FY 90 and \$2.9 million in FY 91--enough to finance the project in FY 90.

THEREFORE, BE IT RESOLVED THAT the Coal Tax Oversight Subcommittee urges the 51st Montana Legislature to support a request to the Montana Coal Board for \$2.8 million to be granted to Big Horn County in Fiscal Year 1990 to complete the project pending review and completion of a proper application, and

BE IT FURTHER RESOLVED that the Coal Tax Oversight Subcommittee recommends that the Montana Coal Board give the next highest consideration to any complete applications filed by Treasure County for planning,

surveying, right of way purchase and reconstruction of the Sarpy Creek Road in FY 90 and FY 91.

The Chairman directs that a copy of this resolution be made part of the final report to be submitted to the leadership of the 51st Legislature, the Montana Coal Board, the Director of the Department of Highways and the Governor of Montana.

Dated this 21st day of September, 1988.

Representative Tom Asay
Chairman

Representative Dave Brown

Senator Bill Yellowtail
[Absent, Not Voting]

Senator John Anderson

RESOLUTION

A RESOLUTION OF THE COAL TAX OVERSIGHT SUBCOMMITTEE OF THE 50TH LEGISLATURE TO THE 51ST LEGISLATURE AND THE GOVERNOR URGING THAT MITIGATION OF COAL AREA IMPACTS RETAIN PRIORITY FOR COAL SEVERANCE TAX FUNDS AND THAT THE COAL BOARD PARTICIPATE IN ANY STATEWIDE INFRASTRUCTURE ASSISTANCE PROGRAM.

WHEREAS, since its creation in 1975, the Coal Board has distributed more than \$60 million to local government units to assist in providing public services and facilities to mitigate impacts of the coal mining industry in southeastern Montana; and

WHEREAS, during its history of more than 13 years, the Board has fulfilled its duties expeditiously and in a manner that reflects credit upon the State of Montana and upon the Board's members and staff; and

WHEREAS, anticipated future expansion of the coal industry in southeastern Montana may create continuing demands for public services and facilities from local governments that lack the financial resources and the technical experience required to satisfy those demands; and

WHEREAS, the Board's members and staff have proved their competence to evaluate impact needs and to distribute grants equitably to local government units that develop sound mitigation plans accompanied by meaningful local financing efforts; and

WHEREAS, further coal development could create demands of an undetermined magnitude upon local governments for public services and facilities; and

WHEREAS, separate from and in addition to the needs for impact mitigation in the coal mining areas of the state, the Governor's Task Force on Infrastructure found in 1984 that Montana's local government units anticipate the need for more than \$8 billion for infrastructure repair and renovation, a total that increases with deferral of remedial action; and

WHEREAS, concepts for financing repair and renovation of deteriorating infrastructure usually include allocation of a portion of the coal severance tax proceeds to provide grants or loans to local governments.

NOW, THEREFORE, BE IT RESOLVED, that the Coal Tax Oversight Subcommittee recommends to the 51st Legislature and to the Governor that:

(1) the satisfaction of local impacts of coal development be superior to all other demands in the

allocation of proceeds of the coal severance tax and that the projects identified to the Coal Tax Oversight Subcommittee during this interim as priority subjects for grants or loans by the Coal Board take precedence in any future system of awarding grants or loans or any future allocation of portions of the coal severance tax;

(2) in considering any proposal for statewide assistance to local governments through grants or loans for infrastructure repair or reconstruction, the Legislature recognize the knowledge and experience acquired by the Board in 13 years of impact mitigation assistance; and

(3) the Coal Board participate in the administration and implementation of any grant or loan program.

BE IT FURTHER RESOLVED, that a copy of this resolution be submitted to the leadership of the 51st Legislature, to the Governor, and to the Coal Board and that this resolution be made part of the final report of the Coal Tax Oversight Subcommittee.

Dated this 18th day of November 1988.

Representative Tom Asay
Chairman

Senator Bill Yellowtail
Vice Chairman

Representative Dave Brown

Senator John Anderson

RESOLUTION

A RESOLUTION BY THE COAL TAX OVERSIGHT SUBCOMMITTEE OF THE 50TH LEGISLATURE REQUESTING THE 51ST LEGISLATURE AND THE GOVERNOR TO PROVIDE SUFFICIENT FUNDING TO THE MONTANA COAL BOARD TO ADEQUATELY SUPPORT THE FUNCTIONS OF THE EASTERN COAL COUNTIES TASK FORCE AND TO CONTINUE STATE PARTICIPATION IN THE FUNDING OF THE ROSEBUD CONSERVATION DISTRICT GROUND WATER MONITORING PROJECT.

WHEREAS, the Eastern Coal Counties Task Force is a statutorily created government unit empowered to exercise delegated powers over a designated geographic area now consisting of the counties of Big Horn, Yellowstone, Rosebud, Treasure, Powder River, Musselshell, Stillwater, and Custer to deal with habitual major crime offenders whose activities cross jurisdictional boundaries; and

WHEREAS, after determining there was a need for undercover agents, the task force entered into an interlocal agreement with the Attorney General's office to hire and supervise the necessary personnel; and

WHEREAS, as of July 1, 1988, the Task Force team had arrested 498 suspects in felony crimes, had not lost a case in court, had seized about \$5.3 million worth of dangerous drugs, had recovered more than \$100,000 worth of stolen property, and had developed information regarding other serious crimes, such as homicides and robberies, that was instrumental in preventing or solving those cases; and

WHEREAS, the Eastern Coal Counties Task Force has sponsored an educational program, including appearances by celebrity role models, as part of its effort to counteract the deleterious impact of forces that would glamorize the use of illegal drugs; and

WHEREAS, since 1982 the Montana Coal Board has granted \$1,708,925 to the Eastern Coal Counties Task Force to augment \$402,353 provided by local governments; and

WHEREAS, the Rosebud Conservation District Ground Water Monitoring program has been gathering information near the surface coal mines of eastern Montana for 16 years to establish a long-term public record of ground water changes associated with coal mining, which will result in information needed in future years by ranchers, county sanitarians, mine planners, and regulators as mining proceeds and expands; and

WHEREAS, the Rosebud Conservation District, which includes areas in Rosebud and Big Horn Counties, contracts with the Montana Bureau of Mines and Geology to perform monitoring of the network of wells; and

WHEREAS, after receiving and duly considering and

approving grant requests for the ground water monitoring program, the Montana Coal Board granted to the Rosebud Conservation District \$50,760 in fiscal year 1986, \$42,360 in fiscal year 1987, and \$46,250 in fiscal year 1988, in addition to \$21,150, \$16,470, and \$8,440 of local funds provided in those respective years; and

WHEREAS, the effectiveness of the Eastern Coal Counties Task Force in preventing serious crime and in educating the public to the harmful effects of illegal drugs and the significance of the invaluable information being compiled by the Rosebud Conservation District Ground Water Monitoring Program have been proved beyond doubt.

NOW, THEREFORE, BE IT RESOLVED BY THE COAL TAX OVERSIGHT SUBCOMMITTEE OF THE 50TH LEGISLATURE:

That the 51st Legislature and the Governor be urged to authorize the Montana Coal Board to make and award the necessary grants from portions of the coal severance tax collections during the fiscal 1990-91 biennium to supplement local government funds to continue the work of the Eastern Coal Counties Task Force and of the Rosebud Conservation District Ground Water Monitoring Program.

BE IT FURTHER RESOLVED, that a copy of this resolution be submitted to the leadership of the 51st Legislature, to the Governor, and to the Coal Board and that this resolution be made part of the final report of the Coal Tax Oversight Subcommittee.

Dated this 18th day of November 1988.

Representative Tom Asay
Chairman

Senator Bill Yellowtail
Vice Chairman

Representative Dave Brown

Senator John Anderson

RESOLUTION

A RESOLUTION OF THE COAL TAX OVERSIGHT SUBCOMMITTEE OF THE 50TH LEGISLATURE URGING THE 51ST LEGISLATURE AND THE GOVERNOR TO RECOGNIZE THE CHALLENGE POSED TO MONTANA'S COAL INDUSTRY BY FEDERAL ACID RAIN LEGISLATION, THE NEED TO SUPPORT THE MAGNETOHYDRODYNAMICS PROGRAM, AND THE NEED TO DEVELOP CLEAN COAL TECHNOLOGY AND RECOMMENDING THESE SUBJECTS FOR STUDY DURING THE NEXT BIENNIUM.

WHEREAS, proposals pending in the United States Congress to minimize the environmental damage caused by acid rain would require electric generating plants to reduce sulfur dioxide emission 10 million tons below the 1980 levels by the year 2000 by limiting emissions of sulfur dioxide to 1 pound per million British thermal units (Btu's) of energy generated; and

WHEREAS, proposed legislation limits emission of nitrogen oxide to 0.4 pound per million Btu's of energy generated; and

WHEREAS, mandated reductions may be achieved by installation of conventional technology (scrubbers) or through the use of clean coal technology; and

WHEREAS, certain utility plants will qualify for subsidization of the capital cost of such technology to be paid from a trust fund accumulated from a national fee on the generation of electricity; and

WHEREAS, proposed acid rain legislation would reduce revenue to the State of Montana and to the Montana coal industry because of lost sales of Montana coal and would impose cost burdens on Montana utility ratepayers to rectify conditions that exist because of the combustion of high-sulfur fuels mined in eastern and midwestern states in generating facilities that benefit the residents of those same regions; and

WHEREAS, passage of acid rain legislation in the form under consideration would restrain and restrict the growth of the Montana coal industry and reduce employment in this state by creating circumstances prejudicial to Montana producers; and

WHEREAS, research on magnetohydrodynamics (MHD) and coal drying and beneficiation and other clean coal technologies, which are proceeding in Montana, promises to perfect techniques and systems to:

(1) markedly increase the energy content of Montana coal;

(2) substantially improve the acceptability of Montana coal on a national sales/purchase basis; and

(3) contribute to resolution of acid rain problems without the potentially crippling impact of proposed legislation on the industry; and

WHEREAS, the J.E. Corette Plant in Billings is a prime candidate for possible designation for MHD retrofit as a pilot project in the federally sponsored research program and selection of the Corette Plant would solidify Montana's leadership in MHD research; and

WHEREAS, Montana's excess capacity in existing coal mines and its vast reserves of recoverable coal are among the state's most valuable assets for future economic growth.

NOW, THEREFORE, BE IT RESOLVED BY THE COAL TAX OVERSIGHT SUBCOMMITTEE, that the 51st Legislature and the Governor of the State of Montana:

(1) recognize and counter any challenge posed to Montana by federal acid rain legislation;

(2) emphasize in Montana's economic objectives the perfection of clean coal technology to increase the acceptability of Montana coal in nationwide markets;

(3) advocate and promote the J.E. Corette Plant in Billings for MHD retrofit as the pilot plant in the continuing research program; and

(4) encourage the sale of Montana coal to use the excess capacity of Montana's coal mines and to promote the opening of new mines to develop the state's reserves.

BE IT FURTHER RESOLVED, that the above subjects receive the highest priority for consideration by the Coal Tax Oversight Subcommittee during the 1989-90 interim.

BE IT FURTHER RESOLVED, that a copy of this resolution be submitted to the leadership of the 51st Legislature and to the Governor and that this resolution be made part of the final report of the Coal Tax Oversight Subcommittee.

Dated this 18th day of November 1988.

Representative Tom Asay
Chairman

Senator Bill Yellowtail
Vice Chairman

Representative Dave Brown

Senator John Anderson



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